It may be argued that serving food as incidental to the carrier's public undertaking should impose no greater duty than that of utmost care, analogous to a carrier's liability for hidden defects in construction. *Cf. Ingalls* v. *Bills*, 50 Mass. 1; *Readhead* v. *Midland R. Co.*, L. R. 4 Q. B. 379. Similarly water companies are not absolutely liable where impure water causes disease. *Buckingham* v. *Plymouth Water Co.*, 142 Pa. 221, 21 Atl. 824; *Green* v. *Ashland Water Co.*, 101 Wis. 258, 77 N. W. 722. But a carrier should certainly be held under no less absolute a duty than is ordinarily imposed in the serving of food. There are no cases involving innkeepers, but a restaurateur has been held to absolute liability. *Doyle* v. *Fuerst*, 129 La. 838, 56 So. 906. A contrary Illinois decision was later distinguished on procedural grounds. *Sheffer* v. *Willoughby*, 163 Ill. 518, 45 N. E. 253. See *Wiedeman* v. *Keller*, 171 Ill. 93, 99, 49 N. E. 210, 212. If the serving of food be regarded as a sale, the doctrines of implied warranty are applicable. Most jurisdictions make the dealer in provisions for immediate human consumption a warrantor of wholesomeness, because of the buyer's justifiable reliance on the seller's superior judgment, and the public policy in preserving health. *Divine* v. *McCormick*, 50 Barb. (N. Y.) 116; *Hoover* v. *Peters*, 18 Mich. 51. *Cf. Farrell* v. *Manhattan Market Co.*, 198 Mass. 271, 84 N. E. 481. The principal case recognizes this rule, but makes an exception in the case of canned goods on the ground that the buyer only relies on the seller to select a reputable brand and to inspect carefully. *Winsor* v. *Lombard*, 35 Mass. 57; *Julian* v. *Laubenberger*, 16 N. Y. Misc. 646, 38 N. Y. Supp. 1052. This distinction, it is submitted, wrongly disregards the public policy involved.

SALES — RIGHTS AND REMEDIES OF SELLER — REVESTING OF VENDOR'S LIEN UPON INSOLVENCY OF BUYER AFTER SALE TO BONÂ FIDE PURCHASER. — The defendant held as bailee goods subsequently sold on credit by the bailor. Before the period of credit expired the first purchaser sold on credit to a second purchaser who sold to the plaintiff, a purchaser for value. All the sales were evidenced by written contracts. The second purchaser, the plaintiff's vendor, then became insolvent. The defendant refused to deliver the goods to the plaintiff, setting up as agent of the first purchaser a lien for the unpaid purchase price. *Held*, that the plaintiff can recover the goods. *Willis* v. *Glenwood Cotton Mills*, 200 Fed. 301 (Dist. Ct., S. C.).

The defendant could set up whatever rights of possession the first purchaser, an unpaid vendor, had. A vendor's lien for the unpaid purchase price is not lost when at the time of the sale the goods are in the possession of a bailee unless the bailee becomes the agent of the buyer and holds possession for him. *In re Batchelder*, 2 Fed. Cas., No. 1099, 2 Lowell 245. A vendor's lien is waived by a sale on credit. *Cutler* v. *Pope*, 13 Me. 377. See *Arnold* v. *Delano*, 4 Cush. (Mass.) 33. But this lien revives, if the vendor still has possession, upon the expiration of the credit or upon the insolvency of the buyer. *Owens* v. *Weedman*, 82 Ill. 409; *Tuthill* v. *Skidmore*, 1 N. Y. Supp. 445; *Arnold* v. *Delano*, *supra; Milliken* v. *Warren*, 57 Me. 46. A resale to third persons does not ordinarily affect the right of an unpaid vendor in possession, for his lien is a legal, and not a mere equitable, right. *Dixon* v. *Yates*, 5 B. & Ad. 313. See *Haskell* v. *Rice*, 11 Gray (Mass.) 240. Therefore a sub-vendee, even though a *bonâ fide* purchaser, is usually subject to the revival of the vendor's lien upon the insolvency of the vendee. *McElwee* v. *Metropolitan Lumber Co.*, 69 Fed. 302; *Hamburger* v. *Rodman*, 9 Daly (N. Y.) 93; *M'Ewan* v. *Smith*, 2 H. L. Cas. 309. The delivery to a *bonâ fide* sub-vendee of an order bill of lading will destroy the vendor's lien, since the bill of lading is a symbol of possession. See *McElwee* v. *Metropolitan Lumber Co.*, 69 Fed. 302. Facts giving rise to an estoppel may also prevent the vendor from claiming the lien. *Stoveld* v. *Hughes*, 14 East 308; *Fourth National Bank* v. *St. Louis Cotton Compress Co.*, 11 Mo.

App. 333. In spite of the contrary intimation in the principal case, a written contract of sale can hardly be a representation that the vendor will not claim a lien in case of insolvency, thereby forming the basis for an estoppel; nor is such a contract a symbol of possession. In the absence of attornment by the bailee to the second purchaser, therefore, the principal case seems erroneous.

SUBROGATION — ASSIGNMENT OF MORTGAGE TO SUBSEQUENT LESSEE ON REDEMPTION. — The assignee of a first mortgage obtained a subsequent lien on the mortgaged land. The owner of a lease intervening between the mortgage and the lien made large improvements on the land. After the acquisition of the lien he brought a bill to compel the assignee of the mortgage to receive the debt and assign the mortgage. *Held*, that a decree will be granted. *Hopkins* v. *Ketterer*, 85 Atl. 421 (Pa.).

A lessee may redeem and be subrogated to the rights of a prior mortgagee, when the mortgagee's rights will not be jeopardized thereby. *Hamilton* v. *Dobbs*, 19 N. J. Eq. 227; *Wunderle* v. *Ellis*, 212 Pa. 618, 62 Atl. 106. *Cf. Snook* v. *Zentmyer*, 91 Md. 485, 46 Atl. 1008. The lessee's equity in protecting his lease and improvements is clear. In the principal case no rights of the defendant were infringed, for he could not utilize his prior mortgage for the benefit of his lien, even where tacking is allowed, since the lien was acquired with constructive notice of the recorded lease. *Toulmin* v. *Steere*, 3 Meriv. 210. Subsequently the mortgagee, to enforce his lien, may compel the lessee to foreclose; but the lessee can then sell subject to the lease, thus protecting his property right. The mortgagee's former rights as a lienholder against the reversion, effective only after the original mortgage claim and the lease are taken out of the whole estate, are still preserved. The lessee, however, has no legal right to an actual assignment of the mortgage. *Hamilton* v. *Dobbs*, *supra*. But *cf. Twombly* v. *Cassidy*, 82 N. Y. 155. The equitable subrogation is adequate to protect him, for if the mortgage on the title record is marked "Paid by lessee," purchasers would take with notice of his equitable rights. And if an assignment is compelled, the assignor might perhaps be made liable on implied warranties. *Cf. Waller* v. *Staples*, 107 Ia. 738, 77 N. W. 570; *Ross* v. *Terry*, 63 N. Y. 613. It would seem, therefore, that equity should not require an actual assignment.

SURETYSHIP — SURETY'S RIGHT OF SUBROGATION — RELATION OF DEPOSITORY'S SURETY TO STATE TREASURER'S SURETY. — A bank in which the state treasurer had deposited public money failed and the bank's surety was compelled to pay the loss. The surety claimed that the loan was illegal and that it should be subrogated to the rights of the state against the treasurer's surety. *Held*, that the surety for the bank is not entitled to relief. *United States Fidelity & Guaranty Co.* v. *Title Guaranty & Surety Co.*, 200 Fed. 443 (Dist. Ct., D. Md.).

By the weight of authority, officials in charge of public money are absolutely liable for its loss except when caused by the act of God or a public enemy, not because they are debtors but for reasons of policy. *Tillinghast* v. *Merrill*, 151 N. Y. 135, 45 N. E. 375; *Rose* v. *Douglass Township*, 52 Kan. 451, 34 Pac. 1046; *United States* v. *Thomas*, 15 Wall. (U. S.) 337. Some jurisdictions make exceptions by statutory construction. *State* v. *Gramm*, 7 Wyo. 329, 52 Pac. 533; *City of Livingston* v. *Woods*, 20 Mont. 91, 49 Pac. 437. Others flatly deny the necessity for such a stringent rule and impose only the limited liability of a trustee. *Wilson* v. *People*, 19 Colo. 199, 34 Pac. 944; *State* v. *Copeland*, 96 Tenn. 296, 34 S. W. 427. In the principal case, though the state might on any view have proceeded against the treasurer's surety, it does not follow that the depository's surety succeeded to that right. Since the bank actually received the money it was clearly the primary debtor, for the misconduct of the official